

No. 22. The Court adhered, (26th June 1804), without prejudice to the petitioner to reclaim if he shall be so advised.

And, upon a reclaiming petition, again adhered, (July 10.)

The Court was much divided; but it occurred to the majority, that this composition clause was liable to be abused, and ought to be strictly construed; that the acceptance of the bankrupt's own obligation for a *part* of what he owed was contrary to the nature of the business, and not founded in the meaning of the act, as he ought either to remain bound in whole, or be discharged altogether; and that the requisite of caution would, in a great measure, be rendered nugatory, if any other plan were to be adopted.

For Petitioner, *W. Erskine.*

Agent, *R. Ayton, W. S.*

Clerk, *Ferrier.*

F.

Fac. Coll. No. 175. p. 395.

1805. June 22. MACKELLAR *against* TEMPLETON.

No. 23.

The trustee upon the sequestrated estate of a creditor, may be appointed one of the commissioners upon the bankrupt estate of the debtor.

A petition and complaint was presented in the name of Duncan Mackellar, Merchant in Glasgow, a creditor of Andrew Blackwood and Company, narrating, that at a meeting of the creditors of that company, Andrew Templeton was elected one of the commissioners directed by the statute, for the purpose of auditing the trustee's accounts, and giving him advice in the management of the subject; that Templeton was not a creditor but merely a trustee on the sequestrated estate of Allan and Sons, who had been creditors of Blackwood and Company; that the statute directed, that the majority in value of the creditors present, shall name any three of the creditors as commissioners; that Templeton not being a creditor, and merely holding a situation of which he might be deprived at any time, was not eligible to the office; that the votes given for him were ineffectual; and that the petitioner having the next number of votes, ought to have been named commissioner.

It was answered: That, by 33d Geo. III. cap. 74. § 20. it is provided, that at all meetings of creditors, "it shall be lawful for agents or attornies, having commissions, either general or special, from any of the creditors, to appear and vote in all matters wherein the constituents themselves, if present, might have voted." Accordingly, in all procedure under the statute, no distinction is made between persons who stand vested with debts in their own person, and those who hold debts by commission from others; that there is no reason why the office of commissioner should be made an exception; that if this complaint were sustained, and a trustee held ineligible to the office, since a bankrupt creditor was himself divested of his estate, it might often happen, that the person who had the deepest interest in the disposal of a bankrupt's fund would be wholly excluded from any control over the management of the trustee; and that, at all events, even if the objection were to be sustained, the Court

could only order a new election, and not hold the complainer as duly elected one of the commissioners. No. 23.

The Court, upon advising the petition and complaint, with answers, were clearly of opinion, that there was no ground for the interpretation of the statute on which the complaint was founded; and that there was no reason why a trustee for a creditor might not be equally well qualified for the office of commissioner, as if the debt had been originally constituted in his person, for his own behoof.

They therefore dismissed the complaint, and found the complainer liable in expenses.

For Petitioner, *Gillies*. Agent, *Jo. Phillips*, W. S. Alt. *W. Erskine*.
 Agent, *Geo. Tod*. Clerk, *Mackenzie*.

J. Fac. Coll. No. 214. p. 477.

1805. June 26.

RICHMOND and FREEBAIRN'S TRUSTEE, against The PELICAN INSURANCE-OFFICE.

THE Directors of the Pelican Insurance-Office, in 1798, appointed Richmond and Freebairn their agents in Edinburgh. The instructions required "the agent to remit immediately all sums received for new policies, or renewals, when the payment exceeds £50 on one number, and is to transmit the balance of his account quarterly, within one month after each quarter-day, either in money, in bank-bills, or in good bills, at a short date." Of this date, (5th September 1801), Richmond and Freebairn were rendered bankrupt.

No. 24.

Payments by bills of exchange, made within sixty days of bankruptcy, good in the case of a running account, operated upon to an equal extent, on both sides of the account.

The account with the Pelican Office at this time stood thus:

Dr.—PELICAN LIFE OFFICE, London, in Account with RICHMOND and FREEBAIRN, Insurance-Brokers, Edinburgh. Gr.

1801.	£.	s.	d.	1801.	£.	s.	d.
March 4. To Sundries,	135	14	0	Feb. 9. By cash,	6	9	0
July 14. To cash,	19	19	8	12. By ditto,	2	5	0
Aug. 31. To profit and loss				April 1. By ditto,	7	7	9
for commission,	16	19	7	May 21. By ditto,	8	12	9
To James Carnegie,				June 10. By ditto,	5	13	6
ridge, for drift,				July 6. By Charles Freebairn,	127	0	0
on him,	465	0	0	14. By cash,	107	18	0
				14. By ditto,	4	13	9
				22. By ditto,	41	10	0
				By ditto,	86	19	0
				Aug. 6. By ditto,	188	2	6
				31. By J. Richmond, for Life			
				Policy,	£30	18	4
				By Charles Free-			
				bairn,	12	14	0
					43	12	4
				By balance to new account,	1	8	8
					£631	13	3
					£631	13	3